IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO. 27482 OF 2007

Dated : December 31, 2007

Between:

St. Mary's Educational Society,]
Rep. By its Secretary Mrs.Y.Mary.

Petitioner

AND

The Chief Commissioner of Income Tax,
Hyderabad –1, Ayakar Bhavan,
Basheerbagh, Hyderabad

Respondent

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO. 27482 OF 2007

ORAL ORDER: **(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)**

Seeking a writ of Certiorari to call for the records relating to File No.CC/Tech.I/22b (153)/2007-08 dated 31.10.2007 whereby the application of the petitioner seeking exemption was rejected and consequently to grant recognition to the petitioner under the provisions of Section 10(23-C)(iv) of the Income Tax Act for the assessment year 2005-2006 and 2006-2007, the petitioner filed this writ petition.

The petitioner is a Society formed with the object of establishing Educational Institutions for imparting education and in furtherance of such object, it established Junior and Degree Colleges at Himayathnagar and at Yousufguda. It is averred that the petitioner Society does not impart or offer coaching classes for EAMCET or any other competitive examinations.

The petitioner is an assessee on the rolls of the respondent, under Sec. 12 of the Income Tax Act. While so, the petitioner made an application under Sec.10(23-C) (vi) of the Income Tax Act claiming exemption in Form 56-D on 27.10.2006 annexing Memorandum of Articles of Association. The petitioner claimed exemption for the assessment year 2005-06 and 2006-2007. While so, the respondent by impugned order dated 31.10.2007 rejected the petitioner's application under sub-clause (6) of Sec.

10(23-C) of the Income Tax Act for violation of Sec. 11(5) read with Sec. 13(1)(d) which contemplates that surplus funds, if any of the institution, should be deposited in the securities enumerated in Sec. 11(5); that the petitioner has collected capitation fee prohibited under the A.P. Educational Institutions (Regularisation of Admission and Prohibition of Capitation Fees) Act, 1983 and that the petitioner's institution is running for the purpose of profit. The impugned order further shows that though notice was issued on 23.10.2007 itself, fixing the date of hearing on 19.10.2007, there was no representation on behalf of the petitioner Institution, as such, the application submitted by the petitioner seeking exemption under Sec. 10(23-C) (vi) of the Income Tax Act for the assessment years 2006-07 and 2007-08 was rejected.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the Income Tax Department.

The learned counsel for the petitioner submitted that the impugned order is passed without putting the petition on notice and, therefore, contended that an opportunity be given to the petitioner to submit objections.

Having regard to the facts and circumstances of the case and having heard the learned counsel for the petitioner and respondent, we feel that the writ petition can be disposed of giving liberty to the petitioner to filed

objections to the impugned order dated 31.10.2007. Accordingly, without delving on merits or otherwise of the contention raise by the petitioner, the writ petition is disposed of giving liberty to the petitioner to raise all the objections that are available to it before the respondent, within a period of two weeks from day and on such filing of the objections by the petitioner, the respondent is directed to consider the same and pass appropriate orders after affording an opportunity of hearing to the petitioner, within a period of three months therefrom.

With these directions, the writ petition is disposed of. No order as to costs.

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T.MEENA KUMARI, J.

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G.ROHINI, J.

December 31, 2007
MAS